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in trust deeds in another class, and the classification is reasonable, and, where the tax is uniform on the same class, the statute is valid.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. §§ 7-15; Dec. Dig. § 7.* 9 Va.-W. Va. Enc. Dig. 307.]

5. Licenses (§ 29*)—Privilege Taxes—Statutes—Construction.—

Under a statute imposing a tax on the recordation of deeds of trust to be assessed and based on the amount of bonds secured thereby, the tax on a deed of trust executed by a mining corporation on property partly within and partly outside the state to secure bonds is properly assessed on the full amount of the bonds secured without deduction for the property outside of the state.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. § 63; Dec. Dig. § 29.* 13 Va.-W. Va. Enc. Dig. 86.]

6. Licenses (§ 29*)—Privilege Taxes—Statutes—Construction.—

Under the statute imposing a tax on the recording of deeds of trust based on the amount secured thereby, a tax on a deed of trust to secure bonds is properly assessed on the full amount of the bonds to be issued, and is not required to be limited to the amount of the bonds actually issued and negotiated at the time of the recordation of the deed.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. § 63; Dec. Dig. § 29.* 13 Va.-W. Va. Enc. Dig. 86.]

Appeal from Circuit Court of City of Richmond.

Action by the Pocahontas Consolidated Colliries Company, Incorporated, against the Commonwealth and another for the refunding of a part of a tax paid under protest. From a judgment for defendants, plaintiff appeals. Affirmed.

Henry & Graham, for appellant.

The Attorney General, for appellees.

JEFFERSON et al. v. GREGORY et al.

Jan. 18, 1912.

[73 S. E. 452.]

1. Appeal and Error (§ 1136*)—Affirmance—Ground.—The decree of the circuit court dismissing a bill on the ground that complainants failed to establish the case as alleged will be affirmed, if the dismissal can be sustained on that or any other ground relied on by defendant.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 1136.* 1 Va.-W. Va. Enc. Dig. 619, 623.]

2. Judgment (§ 303*)—Correction of Mistakes.—Relief may be had

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

from mistakes in judgments and decrees by original proceedings, where the mistake is one of fact.

[Ed. Note.—For other cases, see Judgment, Dec. Dig. § 303.* 8 Va.-W. Va. Enc. Dig. 527, 534.]

3. Judgment (§ 455*)—Equitable Relief—Mistakes—Jurisdiction of Court.—A court which has jurisdiction of the parties and subject-matter has jurisdiction to relieve them from a mistake in a decree entered by a different tribunal, for the mistake is not corrected by reviewing the judgment or decree of the original tribunal, but by restraining the parties from taking advantage of it, and compelling them to execute proper papers to correct it.

[Ed. Note.—For the other cases, see Judgment, Cent. Dig. §§ 860-862; Dec. Dig. § 455.* 8 Va.-W. Va. Enc. Dig. 527.]

4. Quieting Title (§ 12*)—Possession.—Where the removing of clouds and quieting of title is only incidental to other equitable relief, which is properly invoked, the complainant need not be in possession, despite the rule that makes possession a condition precedent to the maintenance of a suit to quiet title.

[Ed. Note.—For other cases, see Quieting Title, Cent. Dig. §§ 8-12, 44, 45; Dec. Dig. § 12.* 14 Va.-W. Va. Enc. Dig. 856.]

5. Witnesses (§ 100*)—Competency—Agent.—Where a commissioner who judicially sold land has died since the sale, and the amount of land sold has come into controversy, complainant's agent who conducted the negotiation with the commissioner is competent as a witness.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 378-394; Dec. Dig. § 100* 13 Va.-W. Va. Enc. Dig. 934, 952.]

6. Witnesses (§ 112*)—Competency—Interest of Parties.—One who is not a party, and has no present interest in a suit, is competent to testify, even though he was once interested in the land which is the subject-matter of the litigation.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 425-475; Dec. Dig. § 112.* 13 Va.-W. Va. Enc. Dig. 935.]

7. Judgment (§ 324*)—Setting Aside—Mistake.—In an action to correct a mistake in a decree which misdescribed land judicially sold, evidence held to show the mistake, and that there has been no such delay in discovering it, and bringing suit to remedy as to bar complainant.

[Ed. Note.—For other cases, see Judgment, Dec. Dig. § 324.* 8 Va.-W. Va. Enc. Dig. 527, 535.]

Appeal from Circuit Court, Amelia County.

Bill by George C. Jefferson and others against D. Gregory and

*For other cases see same topic and section NUMBER in Dec Dig. & Am. Dig. Kev No. Series & Rep'r Indexes.

another. From a decree dismissing the bill, complainants appeal. Reversed and remanded, with directions.

McGuire, Riely & Bryan and *J. G. Jefferson, Jr.*, for appellants.

R. G. Southall, for appellees.

VIRGINIA BREWING CO. *v.* COMMONWEALTH.

Jan. 18, 1912.

[73 S. E. 454.]

Intoxicating Liquors (§ 96*)—Liquor Dealer's Tax—Recovery—Involuntary Payment.—Under Code 1904, § 567, which provides that any person aggrieved by an assessment of taxes may apply to the courts for redress, the tax must have been involuntarily paid under protest; and where, on the refusal of a brewing company's application for a license to establish a distributing house, with advice of the court that the license could not be issued without the payment of a wholesale malt liquor dealer's tax, and that the conduct of the business, without such a payment, would render the company and its agents liable to criminal prosecution, the company paid the tax without a seizure of its property, or the adjudging of a penalty against it, there was no such compulsion as is necessary to justify the recovery.

[Ed. Note.—For other cases, see *Intoxicating Liquors*, Cent. Dig. § 96.* 11 Va.-W. Va. Enc. Dig. 136, 137.]

Error to Corporation Court of Lynchburg.

Action by the Virginia Brewing Company against the Commonwealth. From a judgment dismissing the petition, plaintiff brings error. Affirmed.

Harper & Goodman, for plaintiff in error.

Attorney General, for the Commonwealth.

BOARD OF SUP'RS OF NORFOLK COUNTY et al. *v.* DUKE et al.

Jan. 18, 1912.

[73 S. E. 456.]

1. Statutes (§ 90*)—Constitutional Law (§ 61*)—Municipal Corporations (§ 12*)—Division of Governmental Power—Exercise of Legislative Power—Exercise by Judiciary—Incorporation of Town.—Const. 1902, § 5, and article 3 (Code 1904, pp. ccix, ccxvii), required the legislative, executive, and judicial departments to be separate; and section 117 (page ccxxxviii) provides that general laws for the organi-

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